**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CRIMINAL APPLICATION No. 1754 of 2007**
**With**
**SPECIAL CRIMINAL APPLICATION No. 1756 of 2007**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

**PATEL JETHABHAI MANJIBHAI & 7 - Applicant(s)**
**Versus**
**STATE OF GUJARAT & 2 - Respondent(s)**

==========

**Appearance :**
MR ASHISH M DAGLI for Applicants
MR KT DAVE ADDL.PUBLIC PROSECUTOR for Respondents

==========

**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 21/09/2007**

**ORAL JUDGMENT**

1. Both these petitions have been filed by the original accused of Sessions Case Nos.35 of 2003 and 25 of 2004, pending in the Court of learned Additional Sessions

Judge, Dhrangadhra, for appropriate writ, order and/or directions directing the respondent No.3 – Public Prosecutor to submit the details provided to him by State Government about withdrawal of both the Sessions Cases pending against the petitioners, as on the basis of such instructions, similar cases including Criminal Case No.117 of 2003, filed against the similarly situated farmers for the offences alleged to have been committed during the agitation against shortage of electricity, have been withdrawn.

2. Learned counsel for the petitioners has submitted that due to shortage of electricity, there was agitation by the farmers and for that, offences have been registered against many farmers but thereafter, the State Government has taken a policy decision to withdraw all such cases. He has submitted that in Criminal Case No.1171 of 2003, an application was made by the learned Public Prosecutor for withdrawal of the prosecution in view of policy decision of the State Government, and the said case was permitted to be withdrawn by the trial court and the said case has been disposed of by the trial court accordingly. He has submitted that in the cases of the petitioners the

concerned Public Prosecutor had submitted applications to the concerned court on 10/4/2005 in view of the policy decision of the State Government for withdrawal of the cases pending against the petitioners, requesting to grant permission for the aforesaid two cases and the learned Additional Sessions Judge, Dhrangadhra passed order directing the Dy.Collector to produce relevant decision of the State Government for withdrawal of the prosecution. It is submitted by the learned counsel for the petitioners that though the said material was sent to the concerned Public Prosecutor, Dhrangadhra, the learned Public Prosecutor has not submitted the same in the court and therefore, the learned Additional sessions Judge, Dhrangadhra by his order dtd.1/8/2007 has rejected the application for withdrawal of the cases and therefore the respective petitioners have filed both the petitions for the aforesaid relief.

3. Mr.Dagali, learned counsel for the petitioners have submitted that it is bounden duty of the learned Public Prosecutor to produce the relevant material, which are received by him from the competent authority, before the learned Additional Sessions Judge, Dhrangadhra, for

withdrawal of the prosecution. However, the learned Public Prosecutor is not producing the relevant documents to the Court. It is submitted that in view of the policy decision of the State, application was submitted by the then learned Public Prosecutor in other similar case for withdrawal of the prosecution and the said cases are withdrawn by the State. Submitting accordingly, it is requested to direct the Public Prosecutor to submit the relevant documents before the concerned court for withdrawal of the cases pending against the petitioners.

4. The petition is opposed by Mr.K.T. Dave, learned Additional Public Prosecutor. He has submitted that under sec.321 of the Code of Criminal Procedure, powers to withdraw the prosecution exclusively vests in the Public Prosecutor and as observed by the Hon'ble Supreme Court in the case of Subhash Chandar Vs. the State (Chandigarh Admn.) and others, reported in AIR 1980 S.C. 423, his decision must be independent and not in obedience to directions from District Magistrate or higher authorities and the same should be on germane grounds and even for such withdrawal, consent of the concerned court is necessary. He has also submitted that

no directions can be issued directing the Public Prosecutor to submit an application for withdrawal of prosecution, unless he himself is satisfied for withdrawal of the prosecution on germane grounds. It is submitted that such a relief which is sought in the present application cannot be granted and if such directions are issued, the same would be contrary to sec.321 of the Code of Criminal Procedure. Submitting accordingly it is requested to dismiss both the petitions.

5. Heard the learned counsel for the respective parties.
6. It is the case of the petitioners that in view of the policy decision taken by the State Government to withdraw the prosecutions which are launched against the farmers during the course of agitation against shortage of electricity, similar cases have been withdrawn. Applications were also submitted by the learned Public Prosecutor in the cases pending against the petitioners also, but in absence of material / decision of the State Government, the trial court has rejected the applications.
7. On bare reading of the applications submitted by the learned Public Prosecutor for withdrawal of the prosecutions, it does not prima facie disclose that the

said applications were submitted by the learned Public Prosecutor on the basis of his own satisfaction, but the same have been filed on the basis of some policy decision of the State Government to withdraw the prosecutions.

8. Under sec.321 of the Code of Criminal Procedure, Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with consent of the court, at any time before the judgment is pronounced, withdraw from the the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and, upon such withdrawal if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences and if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences.

9. Sec.321 has been considered and interpreted by the Hon'ble Supreme Court in the case of Subhash Chander Vs. State (Chandigarh Admn.) and others, reported in AIR 1980 S.C.423, wherein the Hon'ble Supreme Court has observed and held that withdrawal of prosecution under sec.321 is exclusive power of the Public Prosecutor and his decision must be independent and not

in obedience to directions from the District Magistrate or higher authorities and it should be on germane grounds and even before withdrawal of the prosecution, consent of the court is necessary. It is further observed by the Hon'ble Supreme Court that when a case is pending in a criminal court, its procedure and progress are governed by the Criminal Procedure Code or other relevant statute. To intercept and recall an inquiry or trial in a court, save in the manner and to the extent provided for in the law, is itself a violation of law. Whatever needs to be done must be done in accordance with the law. It is further observed by the Hon'ble Supreme Court in the said decision that the function of administering justice under our constitutional order, belongs to those entrusted with judicial power. However, there are few exceptions and one of which is sec.321 of Criminal Procedure. It is further observed that under sec.321, the Public Prosecutor and not any executive authority, who is entrusted by the Code with the power to withdraw from a prosecution, and that also with the consent of the Court. It is further observed that the consent of the court under sec.321 as a condition for withdrawal is imposed as a check on the exercise of that power and the

consent will be given only if the public justice in the larger sense is promoted rather than subverted by such withdrawal.

10. Now considering the applications submitted by the concerned Public Prosecutor in the cases of the petitioners, it does not disclose that the concerned Public Prosecutor was satisfied with regard to withdrawal of the prosecution, but the said applications are submitted only on the basis of decision taken by the State Government to withdraw the prosecution. As held by the Hon'ble Supreme Court in the aforesaid cases, Public Prosecutor is not bound to obey the directions of the higher authorities, such application should be filed by the Public Prosecutor on germane ground. Under the circumstances, it cannot be said that any illegality is committed by the court below. However, it will be open for the concerned Public Prosecutor to submit necessary applications for withdrawal of the cases pending against the petitioners, after forming his own opinion and on his subjective satisfaction. As and when such applications are made by the Public Prosecutor, the same shall be considered by the court below in accordance with law without being prejudiced by the orders impugned in

these petitions.

11. In view of the above observations and directions, both the petitions are allowed. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(M.R. SHAH,J.)

rafik